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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,144	12/01/2003	Roger B. Hertz	249011-000018	3792

7590 10/27/2004

Joel H. Bootzin
Piper Rudnick LLP
P.O. Box 64807
Chicago, IL 60664-0807

EXAMINER

HESS, DOUGLAS A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,144

Applicant(s)

HERTZ ET AL.

Examiner

Douglas A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-28 is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-23 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 19 is objected to because of the following informalities: In line 3, it appears "an conveyor belt" should be changed to --a conveyor belt--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 8, 10-12, 14-16, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirk et al. (US Patent No. RE37,194).

See the attached marked up copy of Kirk et al. figure 4 depicting the claimed features.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 6, 7, 17, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk et al. in view of Kuehnle et al. (US Pat. No. 5,960,936).

Kirk et al. Teach the invention as claimed except for disclosing the type of motor which drives their belt 17. Kuehnle et al. teach the use of a reversible servomotor 88 (for precise positioning) in his conveyor system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a servomotor as suggested by Kuehnle et al. into the device of Kirk et al. as a mere matter of design choice, since servomotors are well known as drivers in the conveying arts and the applicant's specification readily admits that such servomotors are available from Kollmorgen in Radford, VA. Furthermore, the mere selection of a well known driving device would depend upon the application of the conveyor and other obvious design parameters which generally do not provide a patentable departure, in this case, over Kirk et al. in view of Kuehnle et al. As far as Kirk et al. conveying his articles reversibly, this would constitute design considerations as well, since space requirements may force one to

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design a conveyor to reciprocate as opposed to move in one direction requiring a longer run of conveyor.

7. Claims 9, 13, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk et al.

Kirk et al. teach the invention as claimed except for the use of cogs for belt contact with a driving support, and the use of beveled edges on his abutments. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a well known cog belt with a mating toothed belt as a drive consideration for precise positioning. The use of such a feature is old and well known and does not provide a patentable departure from that of Kirk et al. Also, the mere claiming of a beveled edge on an abutment does not provide a patentable departure, since that is a design choice as to the type of article being conveyed, and the device of Kirk et al. utilizes an edge on his abutment which aids in receiving the articles.

Allowable Subject Matter

8. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 24-28 are allowed.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Hess whose telephone number is 703-308-3428. The examiner can normally be reached on M-Thurs 5:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Douglas A Hess
Primary Examiner
Art Unit 3651

DAH
October 25, 2004

KIRK ET AL.

